



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार, 31 जुलाई, 2014/9 श्रावण, 1936

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla, the 22nd July, 2014

No. HHC/Admn. 6 (23)/74-XV.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rules, 2009 has been pleased to declare Additional District and Sessions Judge, Ghumarwin, H.P. as Drawing and Disbursing Officer in respect of the Court of District and Sessions Judge, Bilaspur and also the Controlling Officer for the purpose of salary, T.A. etc. in respect of establishment attached to the aforesaid Court under Major Head "2014-Administration of Justice" w.e.f. 24.7.2014 to 8.8.2014 or until Shri Rajeev Bhardwaj, District and Sessions Judge, Bilaspur, H.P. returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001**NOTIFICATION***Shimla, the 22nd July, 2014*

No. HHC/Admn.6 (24)74-Part.—The High Court of Himachal Pradesh, in exercise of the powers vested U/S 12(2) of the Code of Criminal Procedure, 1973, has been pleased to appoint Civil Judge (Junior Division)-cum-JMIC, Dalhousie as Additional Chief Judicial Magistrate for Chamba Division, authorizing him to look after the urgent work pertaining to Chamba Civil & Sessions Division w.e.f. 22.7.2014 to 24.7.2014.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001**NOTIFICATION***Shimla the 22nd July, 2014*

No. HHC/GAZ/ 14-291/06.—Hon'ble the Chief Justice has been pleased to grant ex-post facto sanction of 03 days' commuted leave w.e.f. 24.6.2014 to 26.6.2014 in favour of Shri Subhash Chander Bhaseen, Civil Judge (Jr. Division)-cum-JMIC (I), Solan, H.P.

Certified that Shri Subhash Chander Bhaseen has joined the same post and at the same station from where he had proceeded on leave, after expiry of the above period of leave.

Also certified that Shri Subhash Chander Bhaseen would have continued to hold the same post of Civil Judge (Jr. Division)-cum-JMIC (I), Solan, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001**NOTIFICATION***Shimla the 25th July, 2014*

No. HHC/GAZ/ 14-325/2011—Hon'ble the Chief Justice has been pleased to grant ex-post facto sanction of 05 days' earned leave w.e.f. 09.06.2014 to 13.06.2014 with permission to prefix Sunday fell on 08.06.2014 and to suffix Second Saturday & Sunday fell on 14.06.2014 and 15.06.2014 in favour of Sh. Niranjana Singh, Civil Judge (Jr. Division)-cum-JMIC, Indora, District Kangra, H.P.

Certified that Sh. Niranjana Singh has joined the same post and at the same station from where he had proceeded on leave, after expiry of the above period of leave.

Also certified that Sh. Niranjana Singh would have continued to hold the same post of Civil Judge (Jr. Division)-cum-JMIC, Indora, District Kangra, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001

NOTIFICATION

Shimla, the 25th July, 2014

No. HHC/GAZ/14-133/82-III.—Hon'ble the Chief Justice has been pleased to grant ex-post facto sanction of 03 days commuted leave w.e.f. 07.07.2014 to 09.07.2014 in favour of Shri D.K. Sharma, District and Sessions Judge, Kangra at Dharamshala, H.P.

Certified that Shri D.K. Sharma had joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Shri D.K. Sharma would have continued to hold the same post of District and Sessions Judge, Kangra at Dharamshala, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171001

NOTIFICATION

Shimla, the 25th July, 2014

No. HHC/Admn. 3(149)/80.—08 days earned leave on and with effect from 26.07.2014 to 02.08.2014 with permission to suffix Sunday falling on 03.08.2014, is hereby sanctioned, in favour of Shri Faryad Bhatti, Assistant Registrar of this Registry.

Certified that Shri Faryad Bhatti is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Shri Faryad Bhatti would have continued to officiate the same post of Assistant Registrar but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA -171001**NOTIFICATION***Shimla, the 17th July, 2014*

No. HHC/Admn. 3(153)/80-II.—50 days leave i.e. 21 days commuted leave on and with effect from 23.05.2014 to 12.06.2014 & 29 days earned leave w.e.f. 13.06.2014 to 11.07.2014, with permission to suffix second Saturday & Sunday on 14.06.2014 & 15.06.2014, is hereby sanctioned, ex-post-facto, in favour of Smt. Neelam Thakur, Assistant Registrar of this registry.

Certified that Smt. Neelam Thakur has joined the same post and at the same station from where she had proceeded on leave after the expiry of the above leave period.

Certified that Smt. Neelam Thakur would have continued to officiate the same post of Assistant Registrar but for her proceeding on above leave.

By order,
Sd/-
Registrar General.

[Authoritative English Text of This Department Notification No. TCP-A(3)-4/2014 Dated 17.07.2014 As Required Under Clause (3) of Article 348 of the Constitution of India].

TOWN AND COUNTRY PLANNING DEPARTMENT**NOTIFICATION***Shimla-2, the 17th July, 2014*

No. TCP-A(3)-4/2014.—In supersession of this Department notification No. TCP-A(3)-2/2004 dated 10.08.2004 and subsequent notification No. TCP-A(3)-9/2005 dated 27.02.2007 and in exercise of the powers conferred by section 17 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), the Governor of Himachal Pradesh is pleased to make the following amendments in the Interim Development Plan for Barotiwala Planning, Area, notified vide this Department Notification No. AWAS-TCPI-147/92 dated 5.7.1994 and published in the Himachal Pradesh Rajpatra (extraordinary) dated 27.7.1995, namely:—

Amendment in Chapter 8

In Chapter 8 of the Interim Development Plan for Barotiwala Planning Area for regulation 8.4.3, the following shall be substituted, namely:—

“8.4.3 Industrial Use:

For Industrial use or activities, following regulations shall be applicable:—

(1) Minimum plot area shall be:-

- (a) for small scale industry 250 M² to 500 M²;
- (b) for services/light scale industry 501 M² to 1000 M²;
- (c) for medium scale industry 1001 M² to 5000 M²; and
- (d) for large and heavy scale industry above 5000 M².

Provided that.—

- (i) The plot area as mentioned in clauses (a) to (d) above shall not be applicable in the cases where the sub-division of land has taken place effect before the commencement of the Interim Development Plan for Barotiwala Planning Area,
- (ii) the plot area as mentioned under clauses (a) to (d) above shall not be applicable for the individual plots, if any, created/allotted by the Himachal Pradesh Industries Department and Himachal Pradesh State Industrial Development Corporation (HPSIDC) or any other Authority prior to coming into force of the Interim Development Plan for Barotiwala Planning Area,
- (iii) the layout and design of industrial area, if any, shall be as per requirement of the Industry and shall be got approved from the Director.

(2) Height of floor or storey:

The minimum height of floor or storey height of industrial building shall be 3.00 Metres and sloping roof height shall be in accordance with volume of the structure. In case of roof trusses, height of building may be adjusted or relaxed accordingly.

- (3)** The plot area, minimum set-backs, maximum Floor Area Ratio (FAR) and maximum height of building shall be governed by following table:—

Sr. No.	Type of Industry	Plot area in M ²	Minimum Set Back in Metres				Max. FAR	Max. Height of Building. (in Metres)
			Front	Left	Right	Rear		
1.	2.	3.	4.	5.	6.	7.	8.	9.
1.	Small Scale Industries	250 to 500	3.00	2.00	2.00	2.00	1.75	15.00
2.	Services/ Light scale Industries	501 to 1000	5.00	2.00	2.00	3.00	1.50	15.00
3.	Medium Scale Industries	1001 to 5000	10.00	5.00	5.00	5.00	1.25	20.00
4.	Large and Heavy Scale Industries	Above 5000	15.00	7.50	7.50	7.50	1.00	20.00

Note.—(i) Minimum width of path/road abutting one side of plot shall be 5.00 Metres.

- (ii) Service area required for pharmaceutical units or such type of Industries under requirement of Goods Manufacturing Practice (G.M.P) shall not be included for calculation of FAR, provided it is only used for utilities and services but not in any case for production.
- (iii) For ancillary uses like security post/room shall be allowed in set-back area i.e. one wall shared with the boundary wall and shall be counted in the Floor Area Ratio (FAR).

(4) Construction of Cellar

- (a) Construction of cellar shall not be counted as a storey and should to be constructed within the prescribed set backs and prescribed building lines and subject to maximum coverage on floor i.e. entrance floor and may be put for following uses:-
- (i) storage of household or other goods of ordinarily combustible material;
 - (ii) strong rooms, bank cellars etc;
 - (iii) air conditioning equipment and other machines used for services and utilities of the building; and
 - (iv) parking spaces.
- (b) The cellar shall have following requirements:-
- (i) all the walls shall be kept dead and below the natural ground level except the portion kept for ventilation purpose;
 - (ii) every cellar shall be, in every part, at least 2.40 Metres in height from the floor to the underside of the roof slab or ceiling;
 - (iii) adequate ventilation shall be provided for the cellar and any deficiency in ventilation requirements may be met by providing mechanical ventilation in the form of blowers, exhaust fans and air conditioning system etc;
 - (iv) the minimum height of the ceiling of any cellar shall be 0.90 Metre and the maximum 1.20 Metre above the average surrounding ground level.
 - (v) adequate arrangements shall be made such that surface drainage does not enter the cellar;
 - (vi) the walls and floors of the cellar shall be watertight and be so designed that the effects of the surrounding soil and moisture, if any, are taken into account in design and adequate damp proofing treatment is given;
 - (vii) the access to the cellar shall be separate from the main and alternative staircase providing access and exit from higher floor and where the staircase is continuous in the case of buildings served by more than one staircase, the same shall be enclosed type, serving as a fire separation from the cellar floor and higher floors. Open ramps shall be permitted, if they are constructed within the building line subject to the provision of clause (v) above;
 - (viii) in case partition in the cellars is allowed by the Authority, no compartment shall be less than 50.00 M² in area and each compartment shall have proper ventilation provision and the cellar partition shall however, conform to the norms laid down by the Fire Services; and
 - (ix) in no circumstances, construction of Toilet, Bath, Kitchen etc. shall be allowed in the cellar”.

By order,
Sd/-
Secretary (TCP).

सामान्य प्रशासन विभाग

ख-अनुभाग

अधिसूचना

शिमला-2, 25, जुलाई, 2014

संख्या: जीएडी-बी-(ए) 1-2/2013 (शिमला).—हिमाचल प्रदेश की राज्यपाल की यह राय है कि वर्तमान उप-तहसील कुपवी, जिला शिमला का दर्जा बढ़ाकर तहसील का कर दिया जाए, जिसका मुख्यालय कुपवी, जिला शिमला, हिमाचल प्रदेश में होगा, ताकि नजदीक के गांवों के सम्बद्ध लोगों को बेहतर सेवाएं उपलब्ध करवाई जा सकें और राजस्व से सम्बन्धित कार्य में उनको होने वाली असुविधा से निवारित किया जा सके तथा बेहतर प्रशासनिक नियन्त्रण हो सके ।

अतः हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 (1954 का अधिनियम संख्यांक 6) की धारा 6 और रजिस्ट्रीकरण अधिनियम, 1908 (1908 का अधिनियम संख्यांक 16) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित पटवार वृत्तों से समाविष्ट उप-तहसील कुपवी का दर्जा बढ़ाकर तहसील का करती हैं :-

तहसील	उप-मण्डल	जिला	मुख्यालय	सम्मिलित पटवार वृत्त
कुपवी	चौपाल	शिमला	कुपवी	1. कुपवी 2. चरौली 3. कुलग 4. गोंथ 5. धारचान्दना 6. मलाट 7. भलू

आदेश द्वारा,
पी० मित्रा,
मुख्य सचिव।

[Authoritative English text of the Himachal Pradesh Government Notification NO. GAD-B-(A)-1-2/2013 Dated 25-7-2014 as required under clause(3) of Article 348 of the Constitution of India].

**GENERAL ADMINISTRATION DEPARTMENT
B-Section**

NOTIFICATION

Shimla-2, the 25th July, 2014

No. GAD-B-(A)-1-2/2013 (Shimla).—Whereas, the Governor of Himachal Pradesh is of the opinion that present Sub-Tehsil Kupvi District Shimla may be upgraded to that of Tehsil with its Headquarter at Kupvi, District Shimla H.P., to provide better services to the concerned people of nearby villages and to avoid inconvenience faced by them pertaining to revenue work and to have better administrative control.

Now, therefore, in exercise of the powers conferred by section 6 of the Himachal Pradesh Land Revenue Act, 1954 (Act No. 6 of 1954) and section 5 of the Registration Act, 1908 (Act No. 16 of 1908) the Governor of Himachal Pradesh is pleased to upgrade the Sub-Tehsil Kupvi to that of Tehsil consisting of Patwar Circles given below :—

Tehsil	Sub-Division	District	Headquarter	Patwar Circles Included
Kupvi	Chopal	Shimla	Kupvi	1. Kupvi 2. Chroali 3. Kulag 4. Gonth 5. Dharchandna 6. Malat 7. Bhaloo

By order,
P. MITRA,
Chief Secretary.

सामान्य प्रशासन विभाग
ख-अनुभाग

अधिसूचना

शिमला-2, 25 जुलाई, 2014

संख्या: जीएडी-बी-(ए) 1-1 / 2013-1(सिरमौर).—हिमाचल प्रदेश की राज्यपाल की राय है कि ऐसा करना आवश्यक है कि निम्नलिखित स्तम्भ संख्या 6 में दर्शाए गए पटवार वृत्तों से गठित, जिला सिरमौर में एक नई उप-तहसील हरिपुरधार सृजित की जाए, ताकि नजदीक के गांवों के सम्बद्ध लोगों को बेहतर सेवाएं उपलब्ध करवाई जा सकें और जिससे उनको होने वाली असुविधा से निवारित किया जा सकें तथा बेहतर प्रशासनिक नियन्त्रण हो सके।

अतः हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 (1954 का अधिनियम संख्यांक 6) की धारा 6 और रजिस्ट्रीकरण अधिनियम, 1908 (1908 का अधिनियम संख्यांक 16) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जिला सिरमौर, हिमाचल प्रदेश में एक नई उप-तहसील हरिपुरधार का सृजन करती हैं :—

उप-तहसील का नाम	उप-मण्डल का नाम	तहसील का नाम	जिला	मुख्यालय	सम्मिलित पटवार वृत्त	तहसील/उप तहसील का नाम जिससे अपवर्जित किए गए
1.	2.	3.	4.	5.	6.	7.
हरिपुरधार	संगड़ाह	संगड़ाह	सिरमौर	हरिपुरधार	1. टिकरी डसाकना 2. बढौल 3. भलाड 4. भवाई 5. चाढ़ना नौहरा	संगड़ाह

आदेश द्वारा,
पी0 मित्रा,
मुख्य सचिव।

[Authoritative English text of the Himachal Pradesh Government Notification NO. GAD-B-(A)-1-1/2013-1(Sirmour) Dated 25-7-2014 as required under clause(3) of Article 348 of the Constitution of India].

GENERAL ADMINISTRATION DEPARTMENT
B-Section

NOTIFICATION

Shimla-2, the 25th July, 2014

No. GAD-B-(A)-1-1/2013-1(Sirmour).—Whereas, the Governor of Himachal Pradesh is of the opinion that it is necessary to do so that a new Sub-Tehsil Haripurdhar in District Sirmour may be created consisting of the Patwar Circles shown in column 6, below to provide better services to the concerned people of nearby villages and to avoid inconvenience faced by them and to have the better administrative control.

Now, therefore, in exercise of the powers conferred by Section 6 of the Himachal Pradesh Land Revenue Act, 1954 (Act 6 of 1954) and Section 5 of the Registration Act, 1908 (Act No. 16 of 1908), the Governor of Himachal Pradesh is pleased to create a new Sub-Tehsil at Haripurdhar in District Sirmour, Himachal Pradesh:-

Name of the Sub-Tehsil	Name of Sub Division	Name of Tehsil	District	Head quarter	Patwar Circles Included	Name of Tehsil/Sub-Tehsil from where excluded
1.	2.	3.	4.	5.	6.	7.
Haripurdhar	Sangrah	Sangrah	Sirmour	Haripurdhar	1.Tikari Dasakna 2. Badhol 3. Bhalad 4. Bhavai 5. Charhna	Sangrah Nohra

By order,
P.MITRA,
Chief Secretary.

सामान्य प्रशासन विभाग
अनुभाग—ख

अधिसूचना

शिमला-2, 25 जुलाई, 2014

संख्या: जीएडी-बी-(ए) 1-2/2013 (शिमला).—हिमाचल प्रदेश की राज्यपाल की राय है कि ऐसा करना आवश्यक है कि निम्नलिखित स्तम्भ संख्या 6 में दर्शाए गए पटवार वृत्तों से गठित, जिला शिमला में एक नई उप-तहसील देहा सृजित की जाए, ताकि नजदीक के गांवों के सम्बद्ध लोगों को बेहतर सेवाएं उपलब्ध करवाई जा सकें और जिससे उनको होने वाली असुविधा से निवारित किया जा सके तथा बेहतर प्रशासनिक नियन्त्रण हो सके।

अतः हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 (1954 का अधिनियम संख्यांक 6) की धारा 6 और रजिस्ट्रीकरण अधिनियम, 1908 (1908 का अधिनियम संख्यांक 16) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, जिला शिमला, हिमाचल प्रदेश में एक नई उप-तहसील देहा का सृजन करती हैं :-

उप-तहसील का नाम	उप-मण्डल का नाम	तहसील का नाम	जिला	मुख्यालय	सम्मिलित पटवार वृत्त	तहसील का नाम जिससे अपवर्जित किए गए
1.	2.	3.	4.	5.	6.	7.
देहा	ठियोग	ठियोग	शिमला	देहा	1. बासाधार 2. कुठार 3. घोड़ना (देहा) 4. बागड़ी 5. जनाहन 6. नेरी 7. बलधार 8. घुण्ड 9. बगैण	ठियोग

आदेश द्वारा,
पी० मित्रा,
मुख्य सचिव।

[Authoritative English text of the Himachal Pradesh Government Notification NO. GAD-B-(A)-1-2/2013 (Shimla) Dated 25th July, 2014 as required under clause(3) of Article 348 of the Constitution of India].

GENERAL ADMINISTRATION DEPARTMENT
Section-B

NOTIFICATION

Shimla-2, the 25th July, 2014

No. GAD-B-(A)-1-2/2013(Shimla).—Whereas, the Governor of Himachal Pradesh is of the opinion that it is necessary to do so that a new Sub-Tehsil Deha in District Shimla may be created consisting of the Patwar Circles shown in column 6, below to provide better services to the concerned people of nearby villages and to avoid inconvenience faced by them and to have the better administrative control.

Now, therefore, in exercise of the powers conferred by Section 6 of the Himachal Pradesh Land Revenue Act, 1954 (Act 6 of 1954) and Section 5 of the Registration Act, 1908 (Act No. 16

of 1908), the Governor of Himachal Pradesh is pleased to create a new Sub- Tehsil at Deha in District Shimla, Himachal Pradesh:—

Name of the Sub-Tehsil	Name of Sub Division	Name of Tehsil	District Included	Headquarter	Patwar Circles	Name of Tehsil from where excluded
1.	2.	3.	4.	5.	6.	7.
Deha	Theog	Theog	Shimla	Deha	1. Basadhar 2. Kuthar 3. Ghodna(Deha) 4. Bagarhi 5. Janahan 6. Neri 7. Baladhar 8. Ghund 9. Bagain	Theog

By order,
P. MITRA,
Chief Secretary.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 23rd July, 2014

No. Sharm (A) 7-1/2005-IV (Award).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment, Government of Himachal Pradesh.

Sr. No.	Case No.	Title of the Case	Date of Award
1	33/2014	S/Shri Krishan Thakur V/s M/s Protech Engg. Industrial Ltd.	12-5-2014
2	05/14	Sh. Sohan Lal V/s M/s Marico Ltd. P/Sahib.	27-05-2014
3	06/14	Smt Shabnam V/S -do-	27-05-2014
4	150/2014	Sh. Ishwar Dutt V/S M.D. M/s Hemma Herbs Ltd.	26-05-2014
5	66/2010	Sh. Muni Lal V/s M/s Sidhartha Super Spinning Mills.	29-05-2014
6	48/2008	President/Gen Secty, Employees Union V/s M.D. H.P. GIC Shimla.	26-05-2014
7	22/2014	Sh. Nasib Singh V/s Wipro Elect. Pvt.Ltd.	10-6-2014
8	116/2009	Sh. Ashok Kumar V/s M/s Janta Watch & Radio Services Shimla.	11-6-2014

9	03/2014	Sh. Raj Kumar V/s Ameya Plastic P/Sahib.	12-6-2014
10	104/2010	Sh. Nek Chand V/s DFO Shimla & Ors.	11-6-2014
11	105/2010	Sh. Om Parkash V/s DFO Shimla & Ors.	11-6-2014
12	86/2010	Sh. Raghunandan V/s Sidhartha Super Spining,Mills.	30-06-2014
13	56/2010	Sh. Ishwer Dass V/s Health.	27-06-2014

By order,
Sd/-
(R. D. DHIMAN),
Pr.Secretary (Labour & Employment).

Ref.33/2014

Sh Krishan Thakur V/s M/s Protech Engg. Industries pvt.ltd

12.5.2014:-

Present:- None for petitioner

Shri Mukesh Chand Sharma, HR Manager and Daljeet Singh, Accountant, for respondent.

Despite the fact that petitioner(krishan Thakur) has been duly served,in accordance with law, but he has chosen not to appear before this Court. Shri Mukesh Chand Sharma , HR Manager and Daljeet Singh, Accountant, who have appeared before this Court, on behalf of the respondent , have stated that a settlement/compromise has been effected between the parties. In support of their such contention, they have also shown to this Court the settlement, allegedly, so arrived at between the parties.

Since, the petitioner, despite service, has not put his presence before this Court, this Court has been left with no other alternative but to accept the version made by Shri Mukesh Chand Sharma , HR Manager and Daljeet Singh, Accountant, before this Court regarding a compromise / settlement already having taken place between the parties. Consequently, I proceed to record the composite statement of Shri Mukesh Chand Sharma, HR Manager and Daljeet Singh, Accountant which is recorded accordingly.

On having considered the composite statement made by Sh .Mukesh Chand Sharma , HR Manager and Daljeet Singh, Accountant, I am satisfied that a lawful compromise/ settlement has already been effected between the parties, out of Court. In these circumstances, the reference which has been made to this Court and is as under:—

Whether termination of service of Shri Krishan Thakur s/o Shri Ramesh Chand Thakur R/o Village Buduha, P.O.Sohari, Teh Bangana, Distt Una, HP w.e.f 28.6.2013 by the employer/ Managing Director M/s Protech engineering Industrial Pvt.Ltd , Plot No.124/135, Katha Baddi, Distt Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 id legal and justified ? If not, what amount of back wages, seniority, past service benefits and compensation the above workers is entitled to from the above employer?

Is answered accordingly in terms of settlement /compromise Ex.RB(12 pages). Which shall form part and parcel of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.

Announced:

12.5.2014

Sd/-
Presiding Judge
Labour Court, Shimla.

Ref. 05 of 2014

Sh Sohan Lal V/s M/s Marico Ltd P/Sahib

27.5.2014:-

Present:- None for the petitioner.

Sh. Tarsem Singh, HR Executive , for respondent.

An authorized letter has been filed by Shri Tarsem Singh on behalf of respondent, which has been taken on record. It has been stated, at bar, by Shri Tarsem Singh that already an amicable settlement has been effected between the parties. In support of his such contention , he has produced before this Court compromise memorandum/ settlement. The appointment letter, which has been issued to the petitioner dated 2.11.2013, has also been produced. Besides, reply to the reference , which has been made to this Court, also filed.

On hearing said Tarsem Singh, it appears to me that a compromise/ settlement has already been effected between the parties, out of Court. Thus, I proceed to record his statement which is recorded accordingly.

In view of the statement made by Shri Tarsem Singh, HR Exective for the respondent. I am satisfied that a lawful settlement/compromise has already been effected between the parties. In these circumstances. I do not find it expedient to issue notice to the petitioner(Sohan Lal).

Consequently, for the compromise/ settlement already having taken place between the parties, out of Court, the reference. As under

Whether the termination of the services of Shri Sohan Lal s/o Shri Swroop R/o Village herewala, P.O.Sainwala, Teh Paonta Sahib, Distt Sirmour, HP w.e.f 18.10.2012 by the employer M/s Ameya Plastics, Contractor of M/s Marico Ltd , Village Surajpur, P.O.Puruwala, Teh Paonta sahib Distt Sormour, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified ? If not , what amount of back wages, seniority, past service benefits and compensation the above workers is entitled to from the above employer?

Which has been made to this Court by the appropriate government, stands answered to have been compromised between parties. Let a copy of this award/ order be sent to the appropriate government for publication in the official gazette. File, after completion , be consigned to records.

Announced:-

27.5.2014

Sd/-
Presiding Judge
Labour Court, Shimla.

Ref. 06 of 2014

Smt. Shabnam Lal V/s M/s Marico Ltd P/Sahib

27.5.2014:-

Present:- None for the petitioner.
Sh Tarsem Singh, HR Executive , for respondent.

An authorized letter has been filed by Shri Tarsem Singh on behalf of respondent, which has been taken on record. It has been stated, at bar, by Shri Tarsem Singh that already an amicable settlement has been effected between the parties. In support of his such contention , he has produced before this Court compromise memorandum/ settlement. The appointment letter, which has been issued to the petitioner dated 2.11.2013, has also been produced. Besides, reply to the reference , which has been made to this Court, also filed.

On hearing said Tarsem Singh, it appears to me that a compromise/settlement has already been effected between the parties, out of Court. Thus, I proceed to record his statement which is recorded accordingly.

In view of the statement made by Shri Tarsem Singh, HR Exective for the respondent. I am satisfied that a lawful settlement/compromise has already been effected between the parties. In these circumstances. I do not find it expedient to issue notice to the petitioner(Shabnam)

Consequently, for the compromise/ settlement already having taken place between the parties, out of Court, the reference. As under

Whether the termination of the services of Shri Sohan Lal s/o Shri Swroop R/o Village herewala, P.O.Sainwala, Teh Paonta Sahib, Distt Sirmour, HP w.e.f 18.10.2012 by the employer M/s Ameya Plastics, Contractor of M/s Marico Ltd, Village Surajpur, P.O.Puruwala, Teh Paonta sahib Distt Sormour, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified ? If not , what amount of back wages, seniority, past service benefits and compensation the above workers is entitled to from the above employer?

Which has been made to this Court by the appropriate government, stands answered to have been compromised between parties. Let a copy of this award/ order be sent to the appropriate government for publication in the official gazette. File, after completion , be consigned to records.

Announced:-

27.5.2014

Sd/-
Presiding Judge
Labour Court, Shimla.

**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref no. 150 of 2007
Instituted on 14.12.2008.
Decided on 26.5.2014.

Ishwar Dutt Sharma S/o Shri Chand Lal Sharma R/o Village Bardanda, P.O Dharampur, Tehsil Sarkaghat, District Mandi, HP.

..Petitioner.

VS.

The Managing Director, M/s Hema Herbs, Pvt., Ltd., Pot No. 39, Industrial Area Barotiwala, District Solan. HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Ms. Madhu Sharma, Advocate.

For respondent: Shri Rajeev Sharma, Advocate.

AWARD

The reference for adjudication, is as under:-

"Whether the termination of Shri Ishwar Dutt Sharma S/o Shri Chand lal Sharma workman by the Management of M/s Hema Herbs (P) Ltd., Plot No. 30, Industrial Area, Barotiwala, District Solan, HP without serving him notice of absenteeism is legal and justified? If not, what relief of seniority, back wages and amount of compensation the concerned aggrieved workman is entitled to?"

2. The case of the petitioner is that he was initially appointed as manufacturing chemist, on permanent basis, on 13.8.2005, with the respondent which is engaged in the manufacturing of a special type of oil namely Navratan oil. In the last week of Feb., 2006, when the production manager Mr. Praveen Chaudhory was on leave and in his place Mr. Atul Verma, Quality Manager was assigned to supervise the production work, he (Atul Verma) without taking any care, as required to enter the manufacturing room, entered the same and ordered the petitioner to finish the whole work within eight hours instead of scheduled twelve hours. He further threatened him (petitioner) that if the work was not finished, as directed, strict action was to be taken against him. At that time, he had also used abusive language. It is further stated that on the same day, the petitioner who had been asked to give explanation regarding his alleged misbehavior and misconduct. Later on, it transpired that Mr. Atul Verma had made a complaint to the higher officials against the petitioner and without any delay, action was taken, against him, without verifying the authenticity of the alleged misbehavior. In fact, as per the standards prescribed, the entire process, to manufacture the oil, was to take twelve hours. Thus, the work could not have been completed within lesser time as directed by Mr. Atul Verma. Hence, the complaint which had been made against the petitioner by said Atul Verma was false and baseless. After the alleged occurrence, the behavior of Atul Verma against the petitioner had become cold from last week of Feb. onwards and he started quarreling with him (petitioner) without any cause. For this reason, he (petitioner) had been falsely implicated and subsequently terminated and that too without having been issued any show cause notice, chargesheet and conducting domestic enquiry. Apart from this, neither principles of natural justice had been followed nor the prescribed procedure, as per the standing orders. It is further averred that before the Conciliation Officer, both the parties had arrived at a settlement, as per which, the respondent agreed to reinstate him but despite that he was not taken back in service. In this way, his services were terminated without holding any domestic enquiry and in contravention of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act), especially section 25-F. It is further maintained that he (petitioner) had not abandoned his job. Against this back-drop, a prayer has been made to reinstate him with back-wages and other consequential benefits.

3. The petition has been contested on having raised various preliminary objections including maintainability as the petitioner had not completed 240 working days with the respondent

during the period of his employment. On merits, it has been denied that the appointment of the petitioner was on permanent basis. It is further asserted that the petitioner had misbehaved with Mr. Atul Sharma, during duty hours and in this regard, a written complaint had been made against him. The show cause notice, on the basis of that complaint, had been issued to the petitioner which was refused to be accepted by him. When the petitioner was counseled by Personnel Manager, he again refused to receive a letter, which was issued to him. Such Drama kept on going for few days. On 4.3.2006, when the petitioner was again called in the office of Personnel Manager and counseled, he desired to meet the Factory Manager. In the afternoon, he (petitioner) left the factory after dropping ½ day's leave without getting it sanctioned and even misbehaved with security officers, on main gate, for not having a gate pass. Thereafter, he never reported for regular duty during duty hours, though on two occasions, he had come to the factory to discuss the matter. Further, despite written letter, he failed to report on duty along-with the reply of the show cause letters. It is further averred that the petitioner had abandoned his job and chosen to remain away from the factory. He (petitioner) had also failed to file, any reply, to the satisfaction of the respondent. In this way, he had got himself involved in misconduct and did not opt to file reply to the show cause notice, issued to him, in this regard. It is denied that his services had been terminated by the respondent. Other allegations also denied.

4. By filing rejoinder, the petitioner reaffirmed his own allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were struck on 22.4.2010.

Whether the services of the petitioner have been terminated illegally and in an unjustified manner as alleged?

OPP.....

If issue no.1 is proved, in affirmative, to what service benefits, the petitioner is entitled to?

OPP.....

Whether this petition is not maintainable?

OPR.....

Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Accordingly in Yes.

Issue no. 2 Entitled to reinstatement in service forth-with with seniority and continuity but without back wages.

Issue no. 3 No.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

*Reasons for findings**Issue no.1.*

8. The contention of the petitioner is that when he had some dispute with Mr. Atul Verma, Quality Manager, in the last week of Feb., 2006, a complaint was made against him, in writing, for alleged misbehavior and misconduct. Without verifying the authenticity of the same, his services were terminated and that too without any show cause notice and holding domestic enquiry. On the other hand, the defence plea is that the petitioner had abandoned the job and he did not accept the letters, which had been issued to him, calling for his explanation. The plea of the respondent is further to this effect that the petitioner had not been appointed on permanent basis and further that during the period, he had remained in employment, he did not complete 240 days.

9. While appearing in the witness box as PW-1, the petitioner has supported the facts as made in the petition, on all material particulars including that in the month of Feb., 2006, Mr. Atul Verma, Quality Manager who was performing the duties of Production Manager, had come to the manufacturing unit and told him to finish the work in eight hours instead of twelve hours. Since, he had told that the work could not have been completed before twelve hours, as per prescribed schedule, said Atul Verma had started abusing him. In this regard, he had made a complaint to Manager, HR in the presence of Mr. Deepak Mahodyay, Chemist, which had been torn by him (Manager). Thereafter, he had been attending to his duties. When, he was noticed by Mr. Atul Verma that he was still attending his duties, he against abused him and thereafter, his entry, inside the factory gate, was prohibited. Despite that, he kept on coming for 2/3 days but the management of the respondent used to make him to sit out side the factory. Neither, he had been issued any show cause notice nor chargesheet. During conciliation, the management had agreed to reinstate him without wages which he refused. Ex. PA, is his appointment letter and Ex. PB, pay slip. In the cross-examination, he denied to have an altercation, with Mr. Atul Verma on 25.2.2006 at about 1.30 PM. He further denied to have refused to take explanation letter on 25.7.2006 from Shri Ramesh Sharma, HR Manager and another explanation letter dated 1.3.2006. He admitted to have written letter Ex. RP-1. On 4.3.2006, he had gone out of the factory without gate pass. Further explained that since it was Sunday, no gate pass was required. He is un-employed. Regarding his having applied in other Pharma Companies, situated in HP, he has not filed any document. Without back-wages, he is not ready to work with the respondent.

10. Shri Deepak Mahodyay, PW-2, has supported the version of the petitioner (PW-1) that in the last week of Feb., 2006, Shri Atul Verma, who was performing the duties of Production Manager, had come to the manufacturing unit and asked the petitioner to finish the manufacturing work within eight hours instead of twelve hours. When the petitioner expressed his inability to do so, Mr. Atul Verma had started abusing him. In his presence, the petitioner had made a written complaint to the Manager, HR regarding this incident. In the cross-examination, he stated to have left the job of respondent's company since September, 2006. He admitted that it is for the quality manager to see as to what type of quality instructions are to be given to the Chemists which they are required to follow.

11. Shri Rajinder Kumar (PW-3), from the summoned record, stated that the respondent company was ready to reinstate the petitioner but refused to pay back wages. Report of the Labour-cum-Conciliation Officer is Ex. PW-3/A.

12. Shri Pradeep Verma (PW-4), stated from the summoned record that Ex. PW-4/A to Ex. PW-4/C, are the abstracts of attendance register, payment of salary record and adult workers register. The petitioner had initially been appointed, on 3.8.2005, as per adult workers register. In the cross-examination, he stated that the mandays of the petitioner, being prepared by him, are Ex. RP-2. As per the record, the petitioner had worked only for 147 ½ days.

13. Shri Avneesh Kumar Shukla (RW-1), in his affidavit Ex. RW-1/A, has stated that as per the record, the petitioner had been appointed on 3.8.2005 and that in the month of March, 2006, he stopped coming to the factory in order to do his job. As per record, the petitioner had worked for 147 ½ days. Since, the petitioner had misbehaved with Mr. Atul Verma, the Personnel Department of the factory had issued a show cause notice to him which he had refused to accept. On, 4.3.2006, the petitioner had left, by applying for ½ day's leave without getting the same sanctioned. The version of the petitioner is in-correct that his services had been terminated. In the corss-examination, he stated to have joined the company in the year, 2009. No domestic enquiry had been got conducted against the petitioner.

14. RW-2, Shri Gaurav, Manager, HR, M/s Mapex Remedies Pvt. Ltd. Baddi, has stated from the summoned record that Ishwar Dutt S/o Shri Chand Lal had joined their company on 20.9.2006, as per appointment letter Ex. RW-2/A. Thereafter, on 27.11.2009, he left the job and against joined on 17.8.2010, as per appointment letter Ex. RW-2/B. Now, he has been promoted as Production Head and in this regard letter is Ex. RW-2/C. His monthly salary is Rs. 28,330/-. In the crossexamination, he stated that on 20.4.2011 he had joined the factory. He denied that no promotion letter had been issued to Ishwar Dutt.

15. Ex. PW4/A, is the abstract of attendance register from the month of October, 2005 to march, 2006. The perusal of this register shows that petitioner (Ishwar Dutt) was marked as present till 4.3.2006. Thereafter, as per this document, he has been shown to be marked absent till 31.3.2006. The respondent has led evidence to this effect that since, the petitioner had misbehaved with Mr. Atul Verma, for this reason, he had been issued show cause notice which he (petitioner) did not accept. I may mention that, on the record, the respondent has failed to prove that the petitioner had refused to accept the show cause notice which had been issued to him. Even if, he had refused to accept the show cause notice, still as per the principle of natural justice, it was required of the respondent company to have got conducted a domestic enquiry against him for the alleged misconduct conducted by him against Mr. Atul Verma. Although, the alleged occurrence had taken place with Mr. Atul Verma in the last week of Feb., 2006 but from the statement of RW-1 Shri Avneesh Kumar Shukla, it is revealed that on 4.3.2006, the petitioner was present in the factory. His such evidence is further supported from the abstract of attendance register Ex. PW-4/A. If the petitioner had been attending his work, it cannot be believed that he could not have been served with show cause notice. In my considered view, an enquiry was required to be got conducted, for the alleged misconduct by petitioner, if any action had been proposed to be taken against him.

16. The respondent had also taken a plea that the petitioner had abandoned his job. It is true that from the abstract of attendance register Ex. PW-4/A, it is revealed that the petitioner had been marked absent from 6th March, 2006 to 31.3.2006 but on that score, the contention of the respondent is not proved that he had abandoned the job. If, the petitioner had stopped coming to attend to his duties, it was required of the respondent to have issued him notice calling upon him to attend the duties failing which his services were to be terminated. It is not the case of the respondent that any such notice, calling upon the petitioner to have joined his duties, had been issued. If, the respondent company had issued such notice to the petitioner and despite that he had failed to join his duties, in that event, the contention of the respondent that the petitioner had abandoned his job could said to have been proved. It has been stated by the petitioner (PW-1) that his entry inside the factory gate had been prohibited and further that the management of the respondent company had made him to sit out side the factory gate for 2/3 days. His such version goes to show that although, he had been coming to attend to his work but his entry was not allowed. In these circumstances, the alleged absenteeism of the petitioner cannot be said to be willful/volunteer requiring his alleged termination from service. I disagree with the Ld. Counsel for the respondent that since, the petitioner had not been in continuous service for 240 days, preceding

his alleged termination/abandonment of job, the provisions of the Act are not applicable. As already stated above, it was for the respondent to have issued a notice to the petitioner to join his job/duties, even if, he had been absenting himself from the duties.

17. Consequently, for what has been stated and observed above, I hold that the petitioner had not abandoned his job and that w.e.f. 4.3.2006, his alleged termination cannot be said to be legal and justified. Thus, my answer to this issue is in “yes” accordingly.

Issue no. 2

18. It has been stated by the petitioner (PW-1) that he is un-employed. However, when evidence of Shri Gaurav (RW-2), is considered, it is revealed that Ishwar Dutt (petitioner) had joined M/s Mapex Remedies Pvt. Ltd, Baddi on 20.9.2006, as per appointment letter Ex. RW-2/A and that till 27.11.2009, he remained in job. Again, on 17.8.2010, he joined the said factory as per appointment letter Ex. RW-2/B, where he is still working, on monthly salary of Rs. 28,330/-. **As from the evidence, on record, it is proved that the petitioner is not un-employed, I hold that he is not entitled to back-wages.** Since, on the record, it has been proved that his services had stood terminated illegally, he is entitled to be reinstated, in service, with seniority and continuity. Thus, my answer to this issue is partly in “yes”.

Issue no. 3

19. Although, an objection has been taken by the respondent that this petition is not maintainable but it is to be mentioned that, a reference which is made to a Labour Court, by an appropriate government, needs to be answered. Consequent upon the reference, which had been made to this Court by the appropriate government, the petitioner had filed statement of claim. Since, on record, it is proved that before terminating the services of the petitioner, no domestic enquiry had been got conducted and further that the respondent failed to prove that he (petitioner) abandoned his job, there is no such material, on record, which could go to show that this petition is not legally maintainable. I may mention that on the plea, as has been taken by the respondent, that the petitioner had not completed 240 days in a calendar year preceding his termination, this petition cannot be said to be not maintainable because in the instant case, it is not the case of the respondent that the services of the petitioner had not been terminated by it. On the contrary, its plea is that he had abandoned the job which has not been proved on record. Thus, by holding this petition to be maintainable, my answer to this issue is in “No”.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and the petitioner is ordered to be reinstated in service forth-with with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 26th Day of May, 2014.

(A.S JASWAL),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

Sh. Muni Lal v/s M/s Sidhartha Super Spinning mills Ltd. Nalaghar

29.5.2014

Present: Sh. R P Kaundel, Adv. for the petitioner who is not present .
Sh. Rajeev Sharma for the respondent.
Sh. Ram Avtar Sharma Sr. Dy. Personal Manager also present.

At this stage, Sh. Rajeev Sharma Adv. for the respondent has stated that a compromise has already been effected between the parties. His such version has also been endorsed by Sh. Ram Avtar Sharma, Sr. Dy. Personal Manager, Sh. R P Kaundel Adv. for the petitioner has stated that his client has not come. He further clarified that in regard of the alleged compromised, he is not aware.

It is true that the petitioner is not present before this court but when regard is given to the compromised deed which has been brought to the notice of this court, by the counsel for the respondent, I am of the firm view that no useful purpose is likely to be serve by calling the petitioner to appear before this court in order to seek his version regarding the alleged compromised. I may further like to point-out that on the compromise deed, Sh. Ram Avtar Sharma, has indentified the signatures of the petitioner. Along-with compromised deed, a registration letter of the petitioner has also been filed which goes to show that consequent upon the compromise, allegedly took place between the parties, the petitioner has resigned from the job on having received the dues, amounting to Rs. 75,841/- only.

As from the documents, which have been produced before the court, I am satisfied that a lawful compromise has already been effected between the parties, out of court, I proceed to record the statement of Sh. Ram Avtar Sharma. Sr. Dy. Personal Manager, which is accordingly recorded. His statement has also been countersigned by Sh. Rajeev Sharma, Adv. for the respondent.

Keeping in view the statement of Sh. Ram Avtar Sharma Sr. Dy. Personal Manager, made before this court, has also been countersigned by Sh. Rajeev Sharma Adv. for the respondent, I am fully satisfied that a lawful compromised had been effected between the parties, as per compromise deed Ex. RA on which the petitioner has signed encircled A. Vide cheque Ex. RB, the petitioner has also been paid Rs. 75,841/- only by way of his full and final settlement. Vide Ex. RC, the petitioner has also tendered his registration. Consequently, for the compromised/ settlement, already having taken place between the parties, out of court, the reference, as under:

Whether dismissal of services of Sh. Mini Lal S/o Sh. Gopaljee, card no. 840, token no. 587 by the management of m/s Sidhartha Super Spinning Mills Ltd., Nihal Khera, Tehsil Nalaghar, District Solan, H.P. vide orders dated 7.6.2008, is proper and justified? if not, what relief and consequential service benefits the above workmen is entitle to?

Which has been made to this court, by the appropriate government, stands answered to have been compromised between the parties. The terms of compromise dated Ex. RA, which is also accompanied by Ex. RB (copy of cheque in the sum of Rs. 75,841/-), and Ex. RC (registration letter of the petitioner) shall form part and parcel of this award/ order.

Since, the reference stands answered and compromised an application under order 14 rules 5 C.P.C, which had been made by respondent/applicant, also stands disposed of a compromised. It

be tagged with main case file, after registration. Let a copy of this award/ order be sent to the appropriate government for publication in the official Gazette. File, after completion be consigned to records.

Announced

29.5.2014

Sd/-
Presiding Judge
Labour Court, Shimla

Ref. 48 of 2008

President /General Secty V/s M.D. HP GIC Ltd Shimla.

26.5.2014:-

Present: - S/Shri Devi Lal ,President and Lekh Raj, General secretary , GIC employees union, (registered) for petitioner.

Sh. Hement Vaid Adv. for the respondent No. 1.

Sh. Bhagawan chand, Adv. for the respondent No. 2.

It has been stated by Sh. Lekh Raj General Secretary, GIC Employees Union, (registered) that already compromised has been effected between the parties. Is this regard, he has produced before the court, a resolution dated 4.3.2014. He further stated that consequent upon the compromise, which has already been effected between the parties, out of court, the reference which has been made to this court be disposed of as withdrawn.

I have considered the statement of Sh. Lekh Raj, made before this court. His statement to this effect recorded separately.

Since, a lawful compromise/settlement has already been effected between the parties, which is also borne out from the resolution dated 4.3.2014, Ex.PA, to the satisfaction of this court, the reference has been made to this court and is as under:

Whether the demands raised vide demand notice dated 28.9.2003 (copy enclosed) by president/ General Secretary , General Industries Corporation Employees Union (Regd.) Himrus Building Cart Road Shimla -1 and vide demand charter dated 14.10.2005, (copy enclosed) by the group of the workers/employees i.e. V.K Thakur and other five employees i.e. S/ shri Kuldeep Sharma, H R Thakur, Lokender Banshtu, T.D Sharma and Ms. Veena Harta before the managing director, Himachal Pradesh General Industries Corporation Ltd. (H.P. Government undertaking) Himrus Building cart Road Shimla -1 are justified or unjustified ? If justified, then what relief by way of seniority and other benefits the employees of the H.P General Industries corporation are entitled to?

Stands disposed of/ answered as having been compromised/ settled between the parties in terms of the statement of Sh. Lekh Raj General secretary of GIS employees union (Regd.) which shall form part and parcel of this order/ award.

Let a copy of this award/ order be sent to the appropriate Government for publication in the official Gazette. File, after completion, be consigned to records.

Announced

26.5.2014.

Sd/-
Presiding Judge
Labour Court , Shimla.

Ref. 22 of 2014

Naseeb singh and other versus Factory Manager M/s,wipro electronic ltd.

10/6/2014

Present:- S/shri Naseeb Singh, (Secretary), and Rajinder singh (President of workers committee of M/s wipro Electronic pvt. Ltd. (Wipro Enterprise Pvt. Ltd.) village Katha, Teshil Baddi, Sistrict, Solan H.P, for the petitioner.

Sh. Girish Lal, manager HR along with shri Rajeev Sharma, Advocate for respondent.

It has bene stated by S/Shri Naseeb Singh, (Secretary), and Rajinder Singh(President) that a compromise/ settlement has already been effected between the parties. In this regard, they have also filed joint memo of settlement.

On having gone through the memorandum of settlement, which has been filed before this court and also the statement, made at bar by S/shri Naseeb Singh, (Secretary), and Rajinder singh (President), I am satisfied that a compromise, out of court, has already been effected between the parties. Thus, I proceed to record the composite statement of S/shri Naseeb Singh,(secretary) and Rajinder singh (President) for the petitioner , which is recorded.

Shri Girish lal, Manager, HR has also supported the version of aforesaid Naseeb singh, (Seretary), and Rajinder singh (President) and in this regard his statement also recorded separately which has also been countersigned by Shri Rajeev Kumar Sharma, Adv, for the respondent.

Having regard to the composite statement made by the aforesaid Naseeb singh and Rajinder Singh, which has been admitted to be correct by shri Girish lal, Manager, HR for the respondent , the reference which has been made to this court and is as under:

Whether demands rasied by workers committee consisting of S/shri Rajinder, Punjab, Ravi, Naseeb and Shashi employed by M/s Wipro electronics, Pvt. Ltd., village katha, P.O 7 Tehsil Baddi, District Solan, HP vide demand notice dated 18/4/2013 (copy enclosed) regarding increase in the wages of works employed in the establishment to be fulfilled by the management/employer of M/s Wipro electronics pvt. Ltd village Katha, P.O & Tehsil Baddi, District Solan is legal and justified? If yes, what relief the aggrieved workmen are entitled to form the above employer/management?

Stands answered in terms of memorandum of settlement ex. PA and accompanying annexure A, which is Ex PB. The terms of settlement Ex.PA and accompanying , Ex. PB, along

with composite statement of S/Sh. Naseeb Singh (Secretary) and Rajinder Singh (President), shall form part and parcel of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced

10/6/2014

Sd/-
*Presiding Judge,
Labour court, Shimla.*

Ref. 116 of 2009

Sh. Ashok Kumar v/s M/s janta watch & Radio Services, Shimla.

11/6/2014

Present; Petitioner with Sh. Pawan gautam, adv for petitioner.

Sh. Devender Thakur, adv for respondent.

It has been stated by the petitioner that already , out of court, a compromise had been effected between the parties. He further stated that now, he does not want to prosecute his statement of claim, filed before this court, consequent upon the reference which was made by the appropriate government . On having considered the statement made, at bar, by the petitioner, I am of the opinion that already the matter stands amicably settled between the parties. Thus, I proceed to record his statement, which is recorded accordingly.

Since, on the statement made before this court by the petitioner, this court is satisfied that a lawful compromise has already been effected between the parties , out of court, the reference which has been made by the p appropriate government, as under;

Whether action of the employer i.e Sh. Paramjeet singh, Proprietor, M/s janta watch & Radio services, shop No. 134 lower bazaar Shimla-1 to terminate the services of sh. Ashok kumar s/o late sh. Hari singh w.e.f. feb., 2006 as alleged by the workman without complying the provisions of the industrial disputes act,1947 is proper and justified.? If not, what relief of service benefits the above applicant is entitled to?

Stands answered/disposed of a s having been compromised by the parties, out of court. The statement of petitioner, made before this court, shall form part and parcel of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced;

11/6/2014

Sd/-
*Presiding Judge,
Labour court, Shimla.*

Raj Kumar V/s M/s Ameya Plastics P/sahib

12.6.2014

Ref. 3/2014

Present:- Smt. Veena Sood Adv. for the petitioner.
Sh. Tarsem Singh, HR Executive for the respondent.

An authorized letter has been field by Sh. Tarsem Singh on behalf of respondent, which has been taken on record. It has been stated, at bar, By Sh. Tarsem singh that already an amicable settlement has been effected between the parties. In support of his such contention, he has produced before this court compromise memorandum/settlement. The appointment letter, which has been issued to the petitioner dated 2/11/2013, has also been produced. Besides, reply to the reference, which has been made to this court, also filed.

On hearing said Tarsem Singh , it appears to me that a compromise/settlement has already been effected between the parties out of. Thus, I proceed to record his statement which is recorded accordingly.

In view of the statement made by Sh. Tarsem singh, HR Executive for the respondent, I am satisfied that a lawful settlement/compromise has already been effected between the parties.

Consequently, for the compromise/settlement already having taken place between the parties, out of court, the reference, as under.

Whether the termination of services of Sh. Rajkumar S/o Sh Nathi Ram. R/o Village Majari,P.O Giri Nagar Tehsil Paonta Sahib, District Sirmour, HP w.e.f 18/10/2012 by the employer M/s Ameya Plastics, contractor of M/s Marico, Ltd., village Surajpur, P.O Puruwala, Tehsil Paonta Sahib District Sirmour. HP without complying with the provisions of the Industrial Disputes act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to form the above employer?

Which has been made to this court by the appropriate government, stands answered to have been compromised between the parties. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned, to records.

Announced

12/6/2014

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref no. 104 of 2010.
Instituted on 8.9.2010.
Decided on 11.6.2014.

Nek Chand S/o Shri Khyali Ram, R/o Village Palag, P.O Kadharghat, Tehsil Sunni, District, Shimla, HP.

..Petitioner.

VS.

State of Himachal Pradesh through Principal Secretary (Forests) to the government of Himachal Pradesh, Shimla-2.

The Divisional Forest Officer, Forest Division Shimla, HP.

The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.R Rahi, Advocate
For respondents: Shri Surender Negi, Ld. DDA.

AWARD

The reference for adjudication, is as under:-

"Whether the verbal termination of the services of Shri Nek Chand S/o Shri Khyali Ram by the Divisional Forest Officer, Forest Division Shimla (HP) w.e.f. 1.3.2009, without serving him chargesheet & without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitle to?"

2. Briefly, the case of the petitioner is that initially, he was engaged as daily rated beldar w.e.f. 1.1.2005, with the respondents department and worked as such at Kedarghat beat, Sunni Range, Forest Division Shimla. From his initial date of engagement, he had been working, continuously and uninterruptedly, without any break, for more than 240 days in each calendar year. Although, he had worked upto 31.2.2009, continuously, but to this sheer surprise, on 1.4.2009, when he reported for duties, as per routine, the respondent no.3 (Range Officer), straightway refused to allow him to perform his duties. In fact, on that date, he had been orally apprized that his services were no more required and stood terminated w.e.f. 1.4.2009. It is alleged that since, his services had been terminated without any notice and holding enquiry, the same was in violation of the provisions of section 25-F, 25-G & H of the Act. It is further averred that persons junior to him have been retained in service and that their names are Om Prakash, Yog Raj, Ramesh, Thakur Dass, Hem Dass etc. Since, his services had been terminated in violation of the provisions of the Act, he deserves to be reinstated with all the consequential service benefits including back-wages.

3. The claim Petition has been contested by asserting that the petitioner had been engaged on muster roll as seasonal labourer, on daily wages basis, w.e.f. Jan., 2005 and that his engagement was purely based on the availability of work/funds. Except the year 2006, he did not complete 240 days in any calendar year. Even, preceding the date of his temporary disengagement, he had not completed 240 working days. It is further maintained that the services of the petitioner had been disengaged, on the completion of seasonal work, during the month of March, 2009. It is further explained that daily wagers are engaged by work incharge (forest guard) as per the quantum of various seasonal works. Such engagement is also based on the seniority of daily wagers, so maintained at beat level. It is further asserted that since the petitioner had been engaged for various seasonal forestry works, his disengagement did not attract the provisions of the Act. It is further maintained that since regular work, for the whole year is not available, for this reason, the respondent department engages daily wagers for seasonal forestry works during winter and rainy seasons. Since, in the year, 2006, various works were available under CAT Plan of Koldam Hydro

Electric Project, the petitioner worked for more than 240 days in the said year. Thereafter, the works of said plan became over and for this reason, neither any work was available with the respondents nor funds. It is further asserted that the petitioner is being engaged frequently on various forestry works subject to their availability and that during the winter season of 2010, he was engaged in Bhajji Range. Again, during the rainy season of 2011, he was engaged due to the availability of work and funds. Other allegations denied.

4. The pleadings of the parties gave rise to the following issues which were struck on 16.11.2011.

Whether the termination of the services of petitioner by the respondent w.e.f. 1.3.2009, is in violation of the provisions of the Industrial disputes Act, 1947?

OPP.....

If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

OPP.....

Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings

Issue no.1 & 2.

7. Being interlinked, both these issues are taken up together for discussion and decision.

8. The contention of the petitioner is that his services have been terminated in violation of the provisions of the Act w.e.f. 1.4.2009. On the other hand, the defence version is that since, the petitioner had been engaged for seasonal works, subject to their availability, his services were disengaged in the month of March, 2009, on the completion of seasonal work. The defence is further to this effect that except the year, 2006, the petitioner had not completed 240 days in any calendar year. It is further revealed from the reply, filed by the respondents, that during the winter season of 2010, the petitioner was reengaged in Bhajji Range. He was again re-engaged during rainy season of 2011, due to the availability of work and funds.

9. The question which arises before this Court is whether at the time of engaging the services of the petitioner as daily rated beldar, it was brought to his notice that his services were being engaged only for seasonal works and that the same would automatically stand disengaged

after the completion of the season work. I may mention that there is no such document, brought by the respondents, on file, which may go to show that when the services of the petitioner were engaged on 1.1.2005, he had been made to know in this regard. When, the services of the petitioner stood disengaged on 1.4.2009, neither he had been issued any notice nor paid any compensation in lieu thereof. The plea which has been taken by the respondents is to this effect that since the petitioner had not completed 240 days in the twelve calendar months preceding his termination, no such notice was required to be given to him.

10. When regard is given to the evidence of the petitioner, as per his affidavit, it is revealed that he had completed 240 days in each calendar year including the one preceding his alleged illegal termination. He further stated that upto 31.3.2009, he had worked, continuously, from the date of his initial engagement i.e w.e.f. 1.1.2005. On 1.4.2009, he had not been allowed to perform his duties by the Range Officer, Forest Range, Sunni, who, on that day, orally apprized him that his services were no more required and stood terminated. He further stated that S/Shri Om Prakash, Yog Raj, Ramesh, Thakur Dass, Hem Dass etc., who are junior to him, have been retained in service by the respondents. In the cross-examination, he stated that in the month of March, 2009, his services had been disengaged on the completion of seasonal work. For seasonal works, the labourers are engaged on the basis of seniority and on the completion of work, they are disengaged temporarily. He admitted that in the Forest Department, works are generally available during winter and rainy season. He admitted that during the winter of 2010, he was engaged on work. In the year, 2011, he had also worked.

11. When, regard is given to the evidence of the petitioner, it is revealed that he has no knowledge that for seasonal works, the number of daily wagers are determined as per the work and availability of funds. His evidence further shows that in the month of March, 2009, his services had been disengaged after the completion of seasonal work.

12. Shri Narender Kumar (RW-1) says that the petitioner had been engaged in the month of Jan., 2005, as seasonal labourer, subject to the availability of the work and funds. Except the year, 2006, he had not completed 240 days in any calendar year. Ex. RW-1/A, is the mandays chart of the petitioner. In the month of March, 2009, the petitioner had been disengaged on the completion of seasonal work. As far as seasonal work is concerned, it is not available during the whole year. Such works are available during winter and rainy seasons. The services of the petitioner had never been disengaged illegally. In the years, 2010 and 2011, he (petitioner) had again been engaged. In the cross-examination, he admitted that in the month of March, 2009, when the services of the petitioner were terminated, neither any notice was issued nor he was paid compensation. He further admitted that after the disengagement of the petitioner S/Shri Om Prakash, Yog Raj, Ramesh, Thakur Dass, Hem Dass etc., remained on work, since March, 2009, continuously. He explained that said daily wagers are not junior to the petitioner.

13. The respondents have sought to justify the disengagement of the petitioner to be legal because he had not completed 240 days in the twelve calendar months preceding his termination. In this regard reliance has been placed on Ex. PW-1/A, the mandays chart of the petitioner, which goes to show that except the year, 2006, he had not completed 240 days in any calendar year. I may mention that from the perusal of this document, it is revealed that in the year, 2009, the petitioner had worked for 59 days and in the year, 2008, for 168 days. From this document, it is quite clear that he had not completed 240 days in the twelve calendar months preceding his alleged illegal termination. However, this document further goes to show that in the year, 2006, he (petitioner) had worked for 242 days. Now, it is to be seen as to whether the 242 days for which the petitioner had worked in the year, 2006, can be taken for his being entitled to the benefits of section 25-F of the Act. In **Suraj Pal Singh and others Vs. P.O Labour Court No. III and another, 2002 LAB. I.C 2897** it has been held by the Hon'ble Delhi High Court that : period under section 25-B cannot be

restricted to immediately preceding calendar year. It is further held that employee who has worked for 240 days in any calendar year preceding his termination would be entitled to the benefit under section 25-F.

14. When the ratio of the case law (supra) is applied to the facts of the present case, it is quite clear that in the year, 2006, the petitioner had worked for 242 days. Thus, it can be said that for his having worked for more than 240 days, in the year 2006, would make him entitled to the benefit under section 25-F of the Act. It is admitted case of the respondents that before disengaging/terminating the services of the petitioner, neither he had been given one month's notice in writing indicating the reasons for his retrenchment nor he was paid, in lieu of such notice, wages for the period of the notice. Further, at the time of his retrenchment, he (petitioner) had also not been paid compensation. Since, the services of the petitioner had been disengaged/terminated without having complied with the requirements of section 25-F of the Act, the same is illegal for being against the provisions of the Act. I may also like to point-out that from the evidence of Shri Narender Kuamr (RW-1), it is revealed that S/Shri Om Prakash, Yog Raj, Ramesh, Thakur Dass, Hem Dass etc., were kept in service after March, 2009, when the services of the petitioner came to be disengaged. His evidence further makes it clear that said persons are not junior to the petitioner. On the record, the respondents have brought the mandays chart of said Om Prakash and others. From his chart, it is revealed that Om Prakash (at serial no.3), Thakur Dass (at serial no. 4) and Hem Dass (at serial no. 5), had been engaged on 1.1.2005. Thus, from this document, it is quite clear that said Om Prakash and others, were also engaged on 1.1.2005, the date, on which the petitioner was also engaged, as is evident from his mandays chart Ex. RW-1/A. When, the petitioner is not junior to said Om Prakash and others, it is not understandable as to why his services were disengaged after March, 2009, whereas the services of said Om Prakash etc., were retained. In this way, it can be said that the respondents have also violated the provisions of section 25-G, in disengaging the services of the petitioner. The evidence, on record, further goes to show that in the year, 2010, the petitioner had been reengaged and he worked for 226 days as is evident from his mandays chart Ex. RW-1/A. In the year 2011, he worked for 136 days. I may mention that if there had been no funds or availability of the works, then, the petitioner was not to be reengaged in the years, 2010 and 2011. In this way, having regard to the legal position and also discussion forgoing, I hold that the services of the petitioner had been terminated in illegal and unjustified manner after March, 2009.

15. Now, the next question which arises is to ascertain as to what service benefits, the petitioner is entitled to. Neither, in the claim petition nor in his evidence, the petitioner has stated that after his illegal disengagement, he had remained un-employed. Further, this aspect cannot be overlooked that in the month of Jan., 2010, the petitioner was again engaged. Again, his services were engaged in the month of Jan., 2011, as is evident from Ex. RW-1/A. Although, the counsel for the petitioner has urged with vehemence that the petitioner is entitled for back wages and in support of his such contention, reliance has also been placed on **2003 (4) SET, 350, Divisional Engineer Telecom Coaxial Cable Project, Rajahmundry Vs. Mamidi Venkata Ramana and another** but in my view the petitioner cannot be said to be entitled for back-wages, particularly, when he has not stated that after his disengagement, he remained un-employed. Since, the services of the petitioner had been terminated in violation of the provisions of the Act, I hold that he is entitled to be reinstated in service with seniority and continuity but without back wages. Accordingly, my answer to both these issues is accordingly in "yes".

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed with the result, he is ordered to be reinstated in service forthwith with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and

against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 11th June, 2014 in the presence of parties counsels.

(A.S JASWAL),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref no. 105 of 2010.
Instituted on 8.9.2010.
Decided on 11.6.2014.

Om Prakash S/o Shri Devi Dass, R/o V.P.O Kadharghat, Tehsil Sunni, District, Shimla, HP.
..Petitioner.

VS.

State of Himachal Pradesh through Principal Secretary (Forests) to the government of Himachal Pradesh, Shimla-2.

The Divisional Forest Officer, Forest Division Shimla, HP.
The Range Officer, Forest Range Sunni, Tehsil Sunni, District Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.R Rahi, Advocate
For respondents: Shri Surender Negi, Ld. DDA.

AWARD

The reference for adjudication, is as under:-

"Whether the verbal termination of the services of Shri Om Prakash S/o Shri Devi Dass by the Divisional Forest Officer, Forest Division Shimla (HP) w.e.f. 1.3.2009, without serving him chargesheet & without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitle to?"

2. Briefly, the case of the petitioner is that initially, he was engaged as daily rated beldar w.e.f. 1.1.2005, with the respondents department and worked as such at Kedarghat beat, Sunni Range, Forest Division Shimla. From his initial date of engagement, he had been working, continuously and uninterruptedly, without any break, for more than 240 days in each calendar year. Although, he had worked upto 31.3.2009, continuously, but to this sheer surprise, on 1.4.2009, when he reported for duties, as per routine, the respondent no.3 (Range Officer), straightway refused to allow him to perform his duties. In fact, on that date, he had been orally apprized that his services were no more required and stood terminated w.e.f. 1.4.2009. It is alleged that since, his

services had been terminated without any notice and holding enquiry, the same was in violation of the provisions of section 25-F, 25-G & H of the Act. It is further averred that persons junior to him have been retained in service and that their names are Om Prakash, Yog Raj, Ramesh, Thakur Dass, Hem Dass etc. Since, his services had been terminated in violation of the provisions of the Act, he deserves to be reinstated with all the consequential service benefits including back-wages.

3. The claim Petition has been contested by asserting that the petitioner had been engaged on muster roll as seasonal labourer on daily wages basis, w.e.f. Jan., 2005 and that his engagement was purely based on the availability of work/funds. Except the year 2006, he did not complete 240 days in any calendar year. Even, preceding the date of his temporary disengagement, he had not completed 240 working days. It is further maintained that the services of the petitioner had been disengaged on the completion of seasonal work, during the month of March, 2009. It is further explained that daily wagers are engaged by work incharge (forest guard) as per the quantum of various seasonal works. Such engagement is also based on the seniority of daily wagers, so maintained at beat level. It is further asserted that since the petitioner had been engaged for various seasonal forestry works, his disengagement did not attract the provisions of the Act. It is further maintained that since regular work, for the whole year is not available, for this reason, the respondent department engages daily wagers for seasonal forestry works during winter and rainy seasons. Since, in the year, 2006, various works were available under CAT Plan of Koldam Hydro Electric Project, the petitioner worked for more than 240 days in the said year. Thereafter, the works of said plan became over and for this reason, neither any work was available with the respondents nor funds. It is further asserted that the petitioner is being engaged frequently on various forestry works subject to their availability and that during the winter season of 2010, he was engaged in Bhajji Range. Again, during the rainy season of 2011, he was engaged due to the availability of work and funds. Other allegations denied.

4. The pleadings of the parties gave rise to the following issues which were struck on 16.11.2011.

Whether the termination of the services of petitioner by the respondent w.e.f. 1.3.2009, is in violation of the provisions of the Industrial disputes Act, 1947?

OPP.....

If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

OPP.....

Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief. Reference answered in favour of the petitioner, per operative part of award.

Reasons for findings**Issue no. 1 & 2.**

7. Being interlinked, both these issues are taken up together for discussion and decision.

8. The contention of the petitioner is that his services have been terminated in violation of the provisions of the Act w.e.f. 1.4.2009. On the other hand, the defence version is that since, the petitioner had been engaged for seasonal works, subject to their availability, his services were disengaged in the month of March, 2009, on the completion of seasonal work. The defence is further to this effect that except the year, 2006, the petitioner had not completed 240 days in any calendar year. It is further revealed from the reply, filed by the respondents, that during the winter season of 2010, the petitioner was reengaged in Bhajji Range. He was again re-engaged during rainy season of 2011, due to the availability of work and funds.

9. The question which arises before this Court is whether at the time of engaging the services of the petitioner, as daily rated beldar, it was brought to his notice that his services were being engaged only for seasonal works and that the same would automatically stand disengaged after the completion of the season work. I may mention that there is no such document, brought by the respondents, on file, which may go to show that when the services of the petitioner were engaged, on 1.1.2005, he had been made to know in this regard. When, the services of the petitioner stood disengaged on 1.4.2009, neither he had been issued any notice nor paid any compensation in lieu thereof. The plea which has been taken by the respondents is to this effect that since the petitioner had not completed 240 days in the twelve calendar months preceding his termination, no such notice was required to be given to him.

10. When regard is given to the evidence of the petitioner, as per his affidavit, it is revealed that he had completed 240 days in each calendar year including the one preceding his alleged illegal termination. He further stated that upto 31.3.2009, he had worked continuously, from the date of his initial engagement i.e w.e.f. 1.1.2005. On 1.4.2009, he had not been allowed to perform his duties by the Range Officer, Forest Range, Sunni, who, on that day, orally apprized him that his services were no more required and stood terminated. He further stated that S/Shri Om Prakash, Yog Raj, Ramesh, Thakur Dass, Hem Dass etc., who are junior to him, have been retained in service by the respondents. In the cross-examination, he stated that in the month of March, 2009, his services had been disengaged on the completion of seasonal work. For seasonal works, the labourers are engaged on the basis of seniority and on the completion of work, they are disengaged temporarily. He admitted that in the Forest Department, works are generally available during winter and rainy season. He admitted that during the winter of 2010, he was engaged on work. In the year, 2011, he had also worked.

11. When, regard is given to the evidence of the petitioner, it is revealed that he has no knowledge that for seasonal works, the number of daily wagers are determined as per the work and availability of funds. His evidence further shows that in the month of March, 2009, his services had been disengaged after the completion of seasonal work.

12. Shri Narender Kumar (RW-1), says that the petitioner had been engaged in the month of Jan., 2005, as seasonal labourer, subject to the availability of the work and funds. Except the year, 2006, he had not completed 240 days in any calendar year. Ex. RW-1/A, is the mandays chart of the petitioner. In the month of March, 2009, the petitioner had been disengaged on the completion of seasonal work. As far as seasonal work is concerned, it is not available during the whole year. Such works are available during winter and rainy seasons. The services of the

petitioner had never been disengaged illegally. In the years, 2010 and 2011, he (petitioner) had again been engaged. In the cross-examination, he admitted that in the month of March, 2009, when the services of the petitioner were terminated, neither any notice was issued nor he was paid compensation. He further admitted that after the disengagement of the petitioner S/Shri Om Prakash, Yog Raj, Ramesh, Thakur Dass, Hem Dass etc., remained on work, since March, 2009, continuously. He explained that said daily wagers are not junior to the petitioner.

13. The respondents have sought to justify the disengagement of the petitioner to be legal because he had not completed 240 days in the twelve calendar months preceding his termination. In this regard reliance has been placed on Ex. RW-1/A, the mandays chart of the petitioner, which goes to show that except the year, 2006, he had not completed 240 days in any calendar year. I may mention that from the perusal of this document, it is revealed that in the year, 2009, the petitioner had worked for 59 days and in the year, 2008, for 168 days. From this document, it is quite clear that he had not completed 240 days in the twelve calendar months preceding his alleged illegal termination. However, this document further goes to show that in the year, 2006, he (petitioner) had worked for 241 days. Now, it is to be seen as to whether the 241 days for which the petitioner had worked in the year, 2006, can be taken for his being entitled to the benefits of section 25-F of the Act. In **Suraj Pal Singh and others Vs. P.O Labour Court No.III and another, 2002 LAB. I.C 2897** it has been held by the Hon'ble Delhi High Court that : period under section 25-B cannot be restricted to immediately preceding calendar year. It is further held that employee who has worked for 240 days in any calendar year preceding his termination would be entitled to the benefit under section 25-F.

14. When the ratio of the case law (supra) is applied to the facts of the present case, it is quite clear that in the year, 2006, the petitioner had worked for 241 days. Thus, it can be said that for his having worked for more than 240 days, in the year, 2006, would make him entitled to the benefit under section 25-F of the Act. It is admitted case of the respondents that before disengaging/terminating the services of the petitioner, neither he had been given one month's notice in writing indicating the reasons for his retrenchment nor he was paid, in lieu of such notice, wages for the period of the notice. Further, at the time of his retrenchment, he (petitioner) had also not been paid compensation. Since, the services of the petitioner had been disengaged/terminated without having complied with the requirements of section 25-F of the Act, the same is illegal for being against the provisions of the Act. I may also like to point-out that from the evidence of Shri Narender Kuamr (RW-1), it is revealed that S/Shri Om Prakash, Yog Raj, Ramesh, Thakur Dass, Hem Dass etc., were kept in service after March, 2009, when the services of the petitioner came to be disengaged. His evidence further makes it clear that said persons are not junior to the petitioner. On the record, the respondents have brought the mandays chart of said Om Prakash and others. From his chart, it is revealed that Om Prakash (at serial no.3), Thakur Dass (at serial no. 4) and Hem Dass (at serial no. 5), had been engaged on 1.1.2005. Thus, from this document, it is quite clear that said Om Prakash and others, were also engaged on 1.1.2005, the date, on which the petitioner was also engaged, as is evident from his mandays chart Ex. RW-1/A. When, the petitioner is not junior to said Om Prakash and others, it is not understandable as to why his services were disengaged after March, 2009, whereas the services of said Om Prakash etc., were retained. In this way, it can be said that the respondents have also violated the provisions of section 25-G, in disengaging the services of the petitioner. The evidence, on record, further goes to show that in the year, 2010, the petitioner had been reengaged and he worked for 227 days as is evident from his mandays chart Ex. RW-1/A. In the year 2011, he worked for 136 days. I may mention that if there had been no funds or availability of the works, then, the petitioner was not to be reengaged in the years, 2010 and 2011. In this way, having regard to the legal position and also discussion forgoing, I hold that the services of the petitioner had been terminated in illegal and unjustified manner after March, 2009.

15. Now, the next question which arises is to ascertain as to what service benefits, the petitioner is entitled to. Neither, in the claim petition nor in his evidence, the petitioner has stated that after his illegal disengagement, he had remained un-employed. Further, this aspect cannot be overlooked that in the month of Jan., 2010, the petitioner was again engaged. Again, his services were engaged in the month of Jan., 2011, as is evident from Ex. RW-1/A. Although, the counsel for the petitioner has urged with vehemence that the petitioner is entitled for back wages and in support of his such contention, reliance has also been placed on **2003 (4) SET, 350, Divisional Engineer Telecom Coaxial Cable Project, Rajahmundry Vs. Mamidi Venkata Ramana and another** but in my view the petitioner cannot be said to be entitled for back-wages, particularly, when he has not stated that after his disengagement, he remained un-employed. Since, the services of the petitioner had been terminated in violation of the provisions of the Act, I hold that he is entitled to be reinstated in service with seniority and continuity but without back wages. Accordingly, my answer to both these issues is accordingly in “yes”.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed with the result, the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 11th June, 2014 in the presence of parties counsels.

(A.S JASWAL)
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

Raghunandan Vs. Sidharatha Spinning Mill baddi.

Case called again

30.6.2014

Present: Shri Chetan Sharma, Advocate for petitioner.
Shri Rajeev Sharma, Advocate for respondent.

It has been stated by Shri Chetan Sharma, Advocate that he has informed the petitioner through letter as well as telephone. He further stated that under these circumstances, he has been left with no other alternative but to plead no instructions from his client.

As per my previous order dated 10.6.2014, I had allowed the counsel for the petitioner to produce him (petitioner) in terms of order dated 3.6.2014. Since, the petitioner has not turned up despite having been informed by his counsel through letter as well as telephonically, I have no doubt in my mind that a compromise has already been effected between the parties in terms of the statement of Shri Ram Avtar Singh, recorded on 3.6.2014, which was also countersigned by Shri Rajeev Sharma, Advocate.

Today, I have considered the statement of Shri Ram Avtar Sharma dated 3.6.2014, wherein, he has stated that a compromise has been taken between the parties as per compromise deed Ex. RA and in consequence thereof, the petitioner has received full & final settlement, vide Ex. RA.

The reference, which has been made to this Court, is as under:

“Whether the dismissal of the services of Shri Raghunandan S/o Shri Surat Ram, Card No. 890, Token No. 350, by the management of M/s Sidhartha Super Spinning Mills Ltd., Nihal Khera, Tehsil Nalagarh, District Solan, HP vide orders dated 7.6.2008 after serving chargesheet and after holding enquiry is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

Be it stated at the very out-set that on 3.6.2014, it had been brought to the notice of this Court by Shri Rajeev Sharma, Advocate, for the respondent, that already a compromise had taken place between the parties. On the said date, this Court recorded the statement of Shri Ram Avtar Sharma, Deputy Personnel Manager, regarding the compromise which allegedly took place between the parties and his such statement was also countersigned by Shri Rajeev Sharma, Advocate. Since, on that date, the petitioner was not present, the case was fixed for 10.6.2014, with the direction to Shri R.K Khidta, Advocate vice Shri Chetan Sharma Advocate, to produce him (petitioner). On 10.6.2014, when the case was taken up, Shri Chetan Sharma, Advocate for the petitioner prayed for another date to produce the petitioner, so that he could state before this Court as to whether any such alleged compromise has taken place between the parties or not. His prayer was allowed and the case was fixed for 30.6.2014.

Today, (30.6.2014), when the case was again taken up, Ld. Counsel Shri Chetan Sharma, Advocate for petitioner stated that he had informed the petitioner through letter as well as telephonically but despite that he failed to appear before this Court. Under these circumstances, he also pleaded no instructions.

In my order dated 3.6.2014, I had made it amply clear that the statement of Shri Ram Avtar Sharma, which was recorded by this Court regarding the alleged compromise with the petitioner, was to be considered in view of the version/statement to be made by the petitioner before this Court. Thus, in order to facilitate the petitioner to appear before this Court, two dates were given i.e 10.6.2014 and today (30.6.2014). Since, the petitioner opted not to appear before this Court despite having been informed by his counsel Shri Chetan Sharma, Advocate, I have no doubt in my mind that already a compromise has been effected between the parties in terms of compromise deed Ex. RA and also the full & final settlement amounting to Rs. 74,605/-, which was paid to the petitioner vide Ex. RB. Consequent upon the compromise, so effected between the parties, the petitioner also submitted his resignation, vide Ex. RC.

For what has been stated and observed above, the reference, as has been made to this Court, as aforesaid, requires to be decided/answered as to have been compromised between the parties. Thus, I answer this reference to have been compromised between the parties in terms of the statement of Shri Ram Avtar Sharma dated 3.6.2014, which has also been countersigned by Shri Rajeev Sharma, Advocate for the respondent. This statement of Shri Ram Avtar Sharma as well as compromise deed, Ex. RA, full and final settlement Ex. RB and resignation letter Ex. RC, of the petitioner shall also form part and parcel of this order/award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

30.6.2014.

*Presiding Judge,
Labour Court, Shimla.*

**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA CAMP AT NALAGARH**

Ref no. 56 of 2010.

Instituted on 1.5.2010.

Decided on 27.6.2014.

Ishwar Dass S/o Shri Mangat Ram (Manjit Ram) R/o Village Sorar, Mauza Nohangi, Tehsil Nadaun, District Hamirpur, HP.

..Petitioner.

V/S.

M/s Nexus health & Beauty Care Pvt. Ltd., Plot No. 96, EPIP Phase-1, Jharmajri (Baddi), District Solan. HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, AR.

For respondent: Shri Rajeev Sharma, Advocate.

AWARD

The reference for adjudication, is as under:-

"Whether the termination of Shri Ishwar Dass S/o Shri Manjit Ram (Mangat Ram) by Managing Director M/s Nexus Health & Beauty Care Pvt. Ltd., Plot No. 96, EPIP Phase-1, Jharmajri, Baddi, District Solan. HP w.e.f. 16.11.2008, without serving chargesheet and without conducting any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is proper and justified? If not, what relief of back wages , seniority and past service benefits the above aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that he was employed as worker in the respondent company during the month of Jan., 2008. Although, he served the company with devotion and hard work but on 16.11.2008, his services were illegally terminated by an oral order and he was not allowed to enter the gate of the factory. Thereupon, he raised a demand notice on 20.11.2008. It is further averred that despite the fact that he had been going to the gate of the factory from 16.11.2008 till 20.11.2008, he was not allowed to resume his normal duties. Such an act on the part of the respondent company amounted to unfair labour practice. After terminating his services, the respondent management had issued him some letters alleging therein that his services stood terminated on account of his absence from duties. As a matter of fact, he (petitioner) was not allowed to resume his duties on 16.11.2008. Thus, his services had been terminated in an illegal and unlawful manner, in contravention of the provisions of section 25-F of the Act, because he had completed 240 days in twelve calendar months preceding his termination. Even, his juniors were retained by the respondent in violation of section 25-G and 25-H of the Act. No fair and proper enquiry had been held against him. Even, the norms of procedure, contained in Industrial employment Standing Order Act, were also not complied with. Neither any chargesheet was served upon him nor enquiry conducted as per law. Even, he was not paid his earned wages for 16 days for the work which he had done in the month of November, 2008. Against this back-drop, a prayer has been made to reinstate him with all consequential service benefits including back-wages.

3. The petition has been contested on the plea that the petitioner has not come before the Court with clean hands because he concealed material facts. As a matter of fact, he had joined his duties on 1.3.2008 and left on 31.3.2008. Again, he re-joined his duties on 1.8.2008 and thereafter remained absent from 17.11.2008. Since, he had remained absent for more than 10 days continuously, as per the provisions of H.P government Model Standing Orders, he abandoned the employment. The provisions of section 25-F of the Act, are not applicable in the present case because the petitioner had not completed 240 days in the twelve calendar months preceding his alleged abandonment of the job. It is further averred that when, the petitioner absented himself from duties, on 17.11.2008, letters were sent to him to join but he did not turn up. In order to prove the abandonment, an enquiry was got conducted against him but he did not appear before the enquiry officer despite having been sent registered letters. It has been specifically denied that he was stopped from entering the factory from 16.11.2008. As a matter of fact, his services had never been terminated but he left the job, on his own sweet-will. It is further averred that he has been gainfully employed.

4. By filing rejoinder, the petitioner reaffirmed his own allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were struck on 18.5.2011.

Whether the termination of the services of Ishwar Dass by the management of M/s Nexus Health and Beauty Care, Jharmajri w.e.f. 16.11.2008 is illegal and unjustified?

OPP.....

Relief.

6. I have heard the learned counsel/AR for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Accordingly in Yes.

Relief. Reference answered in favour of the petitioner and against the respondent, per operative part of award.

Reasons for findings

Issue no.1.

8. For the petitioner, it has been urged that he had not abandoned his job, on 16.11.2008, as alleged by the respondent. In fact, on the said date, i.e 16.11.2008, he was not allowed to enter the gate of the factory. It has further been argued that neither any notice of the enquiry had been received by the petitioner nor he was served with any chargesheet. Thus, the alleged enquiry against the petitioner is against the principles of natural justice.

9. On the other hand, Ld. Counsel for the respondent argued that when the petitioner absented himself from attending his duties, he was sent several letters to resume his duties but of no avail. Thus, in order to prove abandonment, on his part, enquiry officer (Shri A.K Sharma) was appointed who, on having followed the principles of natural justice, conducted the enquiry and found that the petitioner had un-authorizedly absented himself from his duties and thus, he abandoned his job. In these circumstances, the name of the petitioner had been struck-off from the

rolls of the company w.e.f. 12.3.2009. Ld. Counsel further contended that the services of the petitioner had not been terminated but, on his own, he abandoned the job.

10. From the stand, which has been taken by the respondent, it is abundantly clear that when the petitioner, allegedly absented himself from duties w.e.f. 17.11.2008, he had been issued letters to join duties but he failed to turn up. Thus, in order to prove abandonment, an enquiry was got conducted and in the same, it was proved that he had un-authorizedly absented himself from duties w.e.f. 17.11.2008.

11. In his affidavit, Ex. PA, the petitioner has stated that he was employed in the month of Jan., 2008 and worked till 16.11.2008, when his services were illegally terminated by an oral order and that he was not allowed to enter the gate of the factory. When, he was not allowed entry in the factory w.e.f. 16.11.2008 till 20.11.2008, he raised a demand notice on 20.11.2008. During conciliation proceedings, no conciliation could be effected. Before his termination, he had completed 240 days. He had not abandoned the job. No letters had been received by him. He was also not given any opportunity of being heard. At the time of alleged enquiry, he was never served. In the cross-examination, he admitted to have joined the respondent company on 1.3.2008. Again, stated that he had joined on 1.1.2008. He could not produce any document regarding his having worked in the respondent company from Jan., 2008 to Feb., 2008. He denied not to have completed 240 days and that on 17.11.2008, on his own, he absented himself from duties. He further denied that after 16.11.2008, he never went to the factory and that Ex. P-5, is his full & final settlement. At present, he is working at Baddi with some "Rediwala". He denied that he is working in a factory at Baddi by getting more wages/money.

12. Shri Malkit Singh (RW-1), in his affidavit Ex. RA stated that as per the records of the company, the petitioner, on his own, had abandoned the job. In order to join duties, he had been issued letters but he failed to do the needful. Thus, a domestic enquiry was got conducted against him by appointing Shri A.K. Sharma, as enquiry officer. The enquiry officer had issued notice to the petitioner who did not join the enquiry and for this reason, ex-parte proceedings were initiated against him. The enquiry officer had found the petitioner to be guilty of misconduct, as per his report. Consequently, order dated 12.3.2009, was passed. The services of petitioner had never been terminated but, on his own, he abandoned his job. The petitioner had been issued the notices dated 19.11.2008 (Ex. RA/1), 8.12.2008 (Ex. RA/2). He had also been issued letter dated 27.2.2009, which is Ex. RA/3. The postal receipt of the letter is Ex. RA/4, and envelop, Ex. RA/5. Ex. RA/6, is the letter dated 12.3.2009 and Ex. RA/7, is the envelop. Copy of demand draft is Ex. RA/8 and Ex. RA/9, is the Bank Voucher dated 15.3.2008. Ex. RA/10, is the postal receipt (documents objected to). In the cross-examination, he admitted that Ex. RA/1 had been received back un-served. Ex. RA/3 and Ex. RA/4, had also been received back un-delivered.

13. According to Shri A.K Sharma (RW-2), he was appointed as an enquiry officer in order to conduct domestic enquiry against the petitioner, to whom he had issued notice Ex. R-1. Ex. R-2, is the postal receipt. He had conducted the enquiry on 9.3.2009 and Ex. R-3, is the enquiry proceedings which are in his hand. On the basis of the same, he had prepared his enquiry report which is Ex. R-4. In the cross-examination, he stated that letters which he had been sent to the petitioner, to attend the enquiry, were received un-delivered. To the management, he had not informed that the petitioner had not attended the enquiry. No publication was got issued in order to ask the petitioner to join the enquiry. He had knowledge of the registered letters which had been received un-delivered.

14. From the evidence of the enquiry officer Shri A.K Sharma (RW-2), it is abundantly clear that the letters which had been issued to the petitioner, for joining the enquiry, had not been

delivered to him. On the record, this letter is dated 27.2.2009 (Ex. R-1) and as per it, the petitioner had been asked to join the enquiry, on 9.3.2009, in the office of factory premises of the company at 11:00 AM. Ex. RA/5, is the envelop of this letter which goes to show that it had been sent back to the sender un-delivered. There is also letter dated 27.2.2009, which had been sent to the petitioner through registered post and that the same is Ex. RA/3. As per this letter, the petitioner had been proposed to be informed that he had been absenting himself from duties since 17.11.2008, without intimation/prior sanction of leave and that as per Employment Standing Orders applicable to the company, his services were deemed to have been abandoned and that his such conduct amounted to misconduct. Further, the management had decided to conduct domestic enquiry and for that purpose, Shri A.K Sharma, had been appointed as an enquiry officer. This letter had also not been delivered to the petitioner. There is another letter dated 29.11.2008, which is Ex. RA/1, issued to the petitioner to explain his absence. From the material, on record, it is quite clear that even this letter was not served upon the petitioner. Ex. R-3, is the enquiry proceedings dated 9.3.2009. Its perusal goes to show that the registered letter, which had been sent to the petitioner regarding holding of domestic enquiry, had been received undelivered. This document further goes to show that since the management was not having any other address of the petitioner, the enquiry officer decided to proceed against him ex-parte. From this document Ex. R-3, it is further borne out that on the same day i.e 9.3.2009, the enquiry against the petitioner was concluded by examining one witness Shri Gaurav. After the conclusion of the enquiry, the enquiry officer gave his report dated 10.3.2009 by holding that the workman/petitioner absented himself from duties w.e.f. 17.11.2008 and did not join his duties despite letters which had been sent to him. The manner, in which the enquiry had been conducted against the petitioner by Shri A.K Sharma, clearly goes to show that it was not fair because no steps were taken in order to get the petitioner intimated regarding the initiation of enquiry against him. The enquiry officer had preferred to proceed against the petitioner ex-parte on the assertion that no other address of the petitioner was available with the management. At least, enquiry officer should have sent another registered letter to the petitioner in order to intimate him regarding the proposed enquiry to be conducted against him. On the other hand, the evidence of the petitioner (PW-1), is to this effect that he was not allowed to enter the gate/resume duties on 16.11.2008. It has also been stated that w.e.f. 16.11.2008 till 20.11.2008, he kept on visiting the gate of the respondent company in order to resume his duties but he was not allowed to do so. I may mention that the letters which had been sent to the petitioner were not delivered to him. In these circumstances, the enquiry which had been conducted by Shri A.K Sharma (RW-2), was against the principles of natural justice because no opportunity of being heard was given to the petitioner. I may mention that the services of the petitioner have been terminated w.e.f. 12.3.2009, on the basis of enquiry, which was conducted by Shri A.K Sharma. As the respondent has failed to prove that the petitioner had abandoned his job, on his own, his contention that his services were terminated w.e.f. 16.11.2008 by an oral order deserves to be believed.

15. The next question which arises for determination as to what service benefits, the petitioner is entitled to. In number of judgments of the Hon'ble Apex Court, it has been held that in the event of reinstatement of a worker, the grant of back wages is not automatic. The Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla has ruled that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".

17. Consequently, for what has been stated and observed above, I without hesitation hold that the services of the petitioner had been terminated without having got conducted a fair domestic enquiry, as per the principles of natural justice, as no opportunity of being heard was afforded to him. Thus, my answer to this issue is in "yes".

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and he is ordered to be reinstated in service forth-with with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 27th Day of June, 2014.

(A.S JASWAL)
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla
Camp at Nalagarh.*

